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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9

10 KENNETH DAVIDSON,

11 Plaintiff,

12 vs.
13

14 TKCA1, LLC; and DOES 1 to 10,
15 Defendants.
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Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES;
2. CALIFORNIA'S UNRUH CIVIL RIGHTS ACT;
3. CALIFORNIA'S DISABLED PERSONS ACT;
4. CALIFORNIA HEALTH & SAFETY CODE;
5. NEGLIGENCE

24
25 Plaintiff KENNETH DAVIDSON ("Plaintiff") complains of Defendants TKCA1,
26 LLC; and DOES 1 to 10 ("Defendants") and alleges as follows:

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PARTIES

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2 1. Plaintiff is a California resident with a physical disability. Plaintiff is
3 diagnosed with paraplegia secondary to MVA damaging T7 and is substantially limited in
4 his ability to walk. Plaintiff requires the use of a wheelchair at all times when traveling
5 in public.

6 2. Defendants are, or were at the time of the incident, the real property owners,
7 business operators, lessors and/or lessees of the real property for a restaurant
8 (“Business”) located at or about 15463 Valley Blvd., City of Industry, California.

9 3. The true names and capacities, whether individual, corporate, associate or
10 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
11 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
12 Court to amend this Complaint when the true names and capacities have been
13 ascertained. Plaintiff is informed and believes and, based thereon, alleges that each such
14 fictitiously named Defendants are responsible in some manner, and therefore, liable to
15 Plaintiff for the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
19 the things alleged herein was acting with the knowledge and consent of the other
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or
22 failure to act by a defendant or Defendants, such allegations and references shall also be
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
24 and severally.

JURISDICTION AND VENUE

25
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
28 *seq.*)

1 7. Pursuant to pendant jurisdiction, attendant and related causes of action,
2 arising from the same nucleus of operating facts, are also brought under California law,
3 including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1,
4 54, 54., 54.3 and 55.

5 8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

6 9. Venue is proper in this court pursuant to 28 USC §1391(b). Defendants
7 reside in this district, Riverside County, California.

8 **FACTUAL ALLEGATIONS**

9 10. In or about May of 2022, Plaintiff went to the Business.

10 11. The Business is a restaurant business establishment, open to the public, and
11 is a place of public accommodation and affects commerce through its operation.
12 Defendants provide parking spaces for customers.

13 12. While attempting to enter the Business during each visit, Plaintiff personally
14 encountered a number of barriers that interfered with his ability to use and enjoy the
15 goods, services, privileges, and accommodations offered at the Business.

16 13. To the extent of Plaintiff's personal knowledge, the barriers at the Business
17 included, but were not limited to, the following:

- 18 a. Defendants failed to comply with the federal and state standards for
19 the parking space designated for persons with disabilities. Defendants
20 failed to post required signage such as "Van Accessible" and
21 "Minimum Fine \$250."
- 22 b. Defendant failed to maintain the parking space designated for persons
23 with disabilities to comply with the federal and state standards.
24 Defendants failed to provide a proper ramp for the persons with
25 disabilities.
- 26 c. Defendant failed to maintain the parking space designated for persons
27 with disabilities to comply with the federal and state standards.
28

1 Defendants failed to provide the access aisles with level surface
2 slopes.

3 14. These barriers and conditions denied Plaintiff the full and equal access to the
4 Business and caused him difficulty and frustration. Plaintiff wishes to patronize the
5 Business, however, Plaintiff is deterred from visiting the Business because his knowledge
6 of these violations prevents him from returning until the barriers are removed.

7 15. Based on the violations, Plaintiff alleges, on information and belief, that
8 there are additional barriers to accessibility at the Business after further site inspection.
9 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-
10 Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

11 16. In addition, Plaintiff alleges, on information and belief, that Defendants
12 knew that particular barriers render the Business inaccessible, violate state and federal
13 law, and interfere with access for the physically disabled.

14 17. At all relevant times, Defendants had and still have control and dominion
15 over the conditions at this location and had and still have the financial resources to
16 remove these barriers without much difficulty or expenses to make the Business
17 accessible to the physically disabled in compliance with ADDAG and Title 24
18 regulations. Defendants have not removed such barriers and have not modified the
19 Business to conform to accessibility regulations.

20 **FIRST CAUSE OF ACTION**

21 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

22 18. Plaintiff incorporates by reference each of the allegations in all prior
23 paragraphs in this complaint.

24 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
25 shall be discriminated against on the basis of disability in the full and equal enjoyment of
26 the goods, services, facilities, privileges, advantages, or accommodations of any place of
27 public accommodation by any person who owns, leases, or leases to, or operates a place
28 of public accommodation. *See* 42 U.S.C. § 12182(a).

1 20. Discrimination, *inter alia*, includes:

- 2 a. A failure to make reasonable modification in policies, practices, or
3 procedures, when such modifications are necessary to afford such
4 goods, services, facilities, privileges, advantages, or accommodations
5 to individuals with disabilities, unless the entity can demonstrate that
6 making such modifications would fundamentally alter the nature of
7 such goods, services, facilities, privileges, advantages, or
8 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 9 b. A failure to take such steps as may be necessary to ensure that no
10 individual with a disability is excluded, denied services, segregated or
11 otherwise treated differently than other individuals because of the
12 absence of auxiliary aids and services, unless the entity can
13 demonstrate that taking such steps would fundamentally alter the
14 nature of the good, service, facility, privilege, advantage, or
15 accommodation being offered or would result in an undue burden. 42
16 U.S.C. § 12182(b)(2)(A)(iii).
- 17 c. A failure to remove architectural barriers, and communication barriers
18 that are structural in nature, in existing facilities, and transportation
19 barriers in existing vehicles and rail passenger cars used by an
20 establishment for transporting individuals (not including barriers that
21 can only be removed through the retrofitting of vehicles or rail
22 passenger cars by the installation of a hydraulic or other lift), where
23 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- 24 d. A failure to make alterations in such a manner that, to the maximum
25 extent feasible, the altered portions of the facility are readily
26 accessible to and usable by individuals with disabilities, including
27 individuals who use wheelchairs or to ensure that, to the maximum
28 extent feasible, the path of travel to the altered area and the

1 bathrooms, telephones, and drinking fountains serving the altered
2 area, are readily accessible to and usable by individuals with
3 disabilities where such alterations to the path or travel or the
4 bathrooms, telephones, and drinking fountains serving the altered
5 area are not disproportionate to the overall alterations in terms of cost
6 and scope. 42 U.S.C. § 12183(a)(2).

7 21. Where parking spaces are provided, accessible parking spaces shall be
8 provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every
9 eight accessible spaces, but not less than one, shall be served by an access aisle 96 in
10 (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA
11 Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall
12 be van parking space. 2010 ADA Standards § 208.2.4.

13 22. Under the ADA, the method and color of marking are to be addressed by
14 State or local laws or regulations. *See* 36 C.F.R., Part 1191. Under the California
15 Building Code (“CBC”), the parking space identification signs shall include the
16 International Symbol of Accessibility. Parking identification signs shall be reflectorized
17 with a minimum area of 70 square inches. Additional language or an additional sign
18 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A
19 parking space identification sign shall be permanently posted immediately adjacent and
20 visible from each parking space, shall be located with its centerline a maximum of 12
21 inches from the centerline of the parking space and may be posted on a wall at the
22 interior end of the parking space. *See* CBC § 11B-502.6, *et seq.*

23 23. Moreover, an additional sign shall be posted either in a conspicuous place at
24 each entrance to an off-street parking facility or immediately adjacent to on-site
25 accessible parking and visible from each parking space. The additional sign shall not be
26 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in
27 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in
28 designated accessible spaces not displaying distinguishing placards or special license

plates issued for persons with disabilities will be towed always at the owner's expense..."
See CBC § 11B-502.8, *et seq.*

24. Here, Defendants failed to provide signs stating "Minimum Fine \$250" and "Van Accessible."

25. Under the 1991 Standards, parking spaces and access aisles must be level with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.2. Accessible parking spaces shall be at least 96 in (2440 mm) wide. Parking access aisles shall be part of an accessible route to the building or facility entrance and shall comply with 4.3. Two accessible parking spaces may share a common access aisle. Parked vehicle overhangs shall not reduce the clear width of an accessible route. Parking spaces and access aisles shall be level with surface slopes not exceeding 1:50 (2%) in all directions. 1991 Standards § 4.6.3.

26. Here, the access aisle is not level with the parking space. Under the 2010 Standards, access aisles shall be at the same level as the parking spaces they serve. Changes in level are not permitted. 2010 Standards § 502.4. "Access aisles are required to be nearly level in all directions to provide a surface for transfer to and from vehicles." 2010 Standards § 502.4 Advisory. *Id.* No more than a 1:48 slope is permitted.

27. The cross slope of ramp surfaces shall be no greater than 1:50. Ramp surfaces shall comply with 4.5. 1991 Standards § 4.8.6. Ramps and landings with drop-offs shall have curbs, walls, railings, or projecting surfaces that prevent people from slipping off the ramp. Curbs shall be a minimum of 2 in (50 mm) high. 1991 Standards § 4.8.7. Outdoor ramps and their approaches shall be designed so that water will not accumulate on walking surfaces. 1991 Standards § 4.8.8. Ground and floor surfaces along accessible routes and in accessible rooms and spaces including floors, walks, ramps, stairs, and curb ramps, shall be stable, firm, slip-resistant, and shall comply with 4.5. 1991 Standards § 4.5.1.

28. Here, Defendants failed to provide a compliant ramp for the access aisle.

1 29. A public accommodation shall maintain in operable working condition those
2 features of facilities and equipment that are required to be readily accessible to and usable
3 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

4 30. By failing to maintain the facility to be readily accessible and usable by
5 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
6 regulations.

7 31. The Business has denied and continues to deny full and equal access to
8 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
9 discriminated against due to the lack of accessible facilities, and therefore, seeks
10 injunctive relief to alter facilities to make such facilities readily accessible to and usable
11 by individuals with disabilities.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

14 32. Plaintiff incorporates by reference each of the allegations in all prior
15 paragraphs in this complaint.

16 33. California Civil Code § 51 states, "All persons within the jurisdiction of this
17 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
18 national origin, disability, medical condition, genetic information, marital status, sexual
19 orientation, citizenship, primary language, or immigration status are entitled to the full
20 and equal accommodations, advantages, facilities, privileges, or services in all business
21 establishments of every kind whatsoever."

22 34. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,
23 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
24 for each and every offense for the actual damages, and any amount that may be
25 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
26 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
27 attorney's fees that may be determined by the court in addition thereto, suffered by any
28 person denied the rights provided in Section 51, 51.5, or 51.6.

1 35. California Civil Code § 51(f) specifies, “a violation of the right of any
2 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
3 shall also constitute a violation of this section.”

4 36. The actions and omissions of Defendants alleged herein constitute a denial
5 of full and equal accommodation, advantages, facilities, privileges, or services by
6 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
7 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
8 51 and 52.

9 37. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
10 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
11 damages as specified in California Civil Code §55.56(a)-(c).

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

14 38. Plaintiff incorporates by reference each of the allegations in all prior
15 paragraphs in this complaint.

16 39. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
17 entitled to full and equal access, as other members of the general public, to
18 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
19 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
20 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
21 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
22 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
23 places of public accommodations, amusement, or resort, and other places in which the
24 general public is invited, subject only to the conditions and limitations established by
25 law, or state or federal regulation, and applicable alike to all persons.

26 40. California Civil Code § 54.3(a) states, “Any person or persons, firm or
27 corporation who denies or interferes with admittance to or enjoyment of public facilities
28 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an

individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages, and any amount as may be determined by a jury, or a court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than one thousand dollars (\$1,000) and any attorney's fees that may be determined by the court in addition thereto, suffered by any person denied the rights provided in Section 54, 54.1, and 54.2.

41. California Civil Code § 54(d) specifies, "a violation of the right of an individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also constitute a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

42. The actions and omissions of Defendants alleged herein constitute a denial of full and equal accommodation, advantages, and facilities by physically disabled persons within the meaning of California Civil Code § 54. Defendants have discriminated against Plaintiff in violation of California Civil Code § 54.

43. The violations of the California Disabled Persons Act caused Plaintiff to experience difficulty, discomfort, and embarrassment. The Defendants are also liable for statutory damages as specified in California Civil Code §55.56(a)-(c).

FOURTH CAUSE OF ACTION

CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.

44. Plaintiff incorporates by reference each of the allegations in all prior paragraphs in this complaint.

45. Plaintiff and other similar physically disabled persons who require the use of a wheelchair are unable to use public facilities on a "full and equal" basis unless each such facility is in compliance with the provisions of California Health & Safety Code § 19955 et seq. Plaintiff is a member of the public whose rights are protected by the provisions of California Health & Safety Code § 19955 et seq.

46. The purpose of California Health & Safety Code § 1995 et seq. is to ensure that public accommodations or facilities constructed in this state with private funds

1 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
2 Title 1 of the Government Code. The code relating to such public accommodations also
3 require that “when sanitary facilities are made available for the public, clients, or
4 employees in these stations, centers, or buildings, they shall be made available for
5 persons with disabilities.

6 47. Title II of the ADA holds as a “general rule” that no individual shall be
7 discriminated against on the basis of disability in the full and equal enjoyment of goods
8 (or use), services, facilities, privileges, and accommodations offered by any person who
9 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
10 Further, each and every violation of the ADA also constitutes a separate and distinct
11 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
12 award of damages and injunctive relief pursuant to California law, including but not
13 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

14 **FIFTH CAUSE OF ACTION**

15 **NEGLIGENCE**

16 48. Plaintiff incorporates by reference each of the allegations in all prior
17 paragraphs in this complaint.

18 49. Defendants have a general duty and a duty under the ADA, Unruh Civil
19 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
20 to the Plaintiff.

21 50. Defendants breached their duty of care by violating the provisions of ADA,
22 Unruh Civil Rights Act and California Disabled Persons Act.

23 51. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff
24 has suffered damages.

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PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully prays for relief and judgment against Defendants as follows:

1. For preliminary and permanent injunction directing Defendants to comply with the Americans with Disability Act and the Unruh Civil Rights Act;
2. Award of all appropriate damages, including but not limited to statutory damages, general damages and treble damages in amounts, according to proof;
3. Award of all reasonable restitution for Defendants' unfair competition practices;
4. Reasonable attorney's fees, litigation expenses, and costs of suit in this action;
5. Prejudgment interest pursuant to California Civil Code § 3291; and
6. Such other and further relief as the Court deems just and proper.

DEMAND FOR TRIAL BY JURY

Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby demands a trial by jury on all issues so triable.

Dated: August 1, 2022

SO. CAL. EQUAL ACCESS GROUP

By: /s/ Jason J. Kim
Jason J. Kim, Esq.
Attorneys for Plaintiff